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Supreme Court of the United States

OCTOBER TERM, 1922

No. 795 and No. 796

JESSE C. ADKINS, et al., Constituting the Minimum Wage Board of the District of Columbia,

Appellants,

against

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation.

JESSE C. ATKINS, et al., Constituting the Minimum Wage Board of the District of Columbia,

Appellants,

against

WILLIE A. LYONS.

MOTION TO FILE PRINTED ARGUMENT AS AMICUS CURIAE UPON BEHALF OF STATE OF NEW YORK AND PROPOSED PRINTED ARGUMENT.

CARL SHERMAN,
Attorney General of New York,
Office and Post Office Address,
Capitol, Albany, N. Y.

EDWARD G. GRIFFIN,
Deputy Attorney General.

Supreme Court of the United States

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October Term, 1922.
No. 795 and
No. 796.

MOTION TO FILE PRINTED ARGUMENT AS AMICUS CURIAE.

Now comes the State of New York by its Attorney-General, Carl Sherman, and respectfully moves this Honorable Court for leave to file as a friend of the Court, a printed argument, hereto annexed, in support of the constitutionality of minimum wage legislation for women and minors, for the reasons that there is now pending in the Legislature of the State of New York a bill providing for a similar law, and because other laws have been enacted for the State of New York relating to women which may be ad-

versely affected by an affirmance of the judgment in the case at bar.

Dated: Albany, N. Y., February 14, 1923.

CARL SHERMAN,
Attorney-General of New York,
Capitol, Albany, N. Y.

EDWARD G. GRIFFIN,
Deputy Attorney-General.

I, Edward G. Griffin, hereby certify that on the ..... day of February, 1923, I mailed in a prepaid envelope three copies of the within motion and proposed printed argument, to Challen D. Ellis, Esq., Attorney of Record for the Appellees in the above entitled appeals, at his office in the Southern Building, at Washington, D. C.

EDWARD G. GRIFFIN,
Deputy Attorney-General.

SUPREME COURT OF THE UNITED STATES.

JESSE C. ADKINS, et al., Constituting the Minimum Wage Board of the District of Columbia,

Appellants,

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THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation.

12

October Term, 1922.
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13

Appellants,

against

WILLIE A. LYONS.

PRINTED ARGUMENT FOR STATE OF NEW YORK.

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We apprehend that the issue presented is only as broad as is defined at pages XVII–XVIII of the main brief for the appellants. Yet, narrow as the issue really is, it comprehends within it the constitutionality of a proposed minimum wage law now pending in the Legislature of the State of New York; further, the implications found in the second majority opinion of the Court below as necessarily following from the disapproval of such a statute, include laws of New York whereby contracts for employment with women

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16 *Printed Argument for State of New York.*

are singled out for other special industrial protection.

The purpose of our argument is not to extend the application of the principles involved, but merely to recall and emphasize the immediate or ultimate effect of a condemnation of the statute
17 under review upon the system of legislation affecting working women in the most important industrial State. Consequently, we shall avoid all repetition and even elaboration of the arguments advanced in the briefs already filed and shall confine ourselves to the single purpose of a short recital of the situation in New York as it may differ or disclose exaggeration.
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Position of Industrial Women in New York State.

Of the 4,215,968 women in New York State 1,135,948 were gainfully employed as compared with Pennsylvania, the next largest industrial State, where 686,028 were so employed out of a total of 3,321,983 in the year 1920. 42.5 per cent
19 of the women employed in New York are under 25 years of age, and 80 per cent are of the child-bearing age. Only about 13 per cent are unionized. In New York City alone there are 32,590 factories with a yearly product of $5,260,707,577 in value. In the State are 2,786,112 foreign-born whites and in the Greater City 1,991,547. All
20 this suggests the presence of a high degree of exploitation. We, therefore, present a situation where the evils described in appellants' main brief are far more acute than in the States where minimum wage laws are already operating. For instance, in the minimum wage law, State of Massachusetts, there are 223,830 women em-

ployed in manufacturing industries, and in North Dakota, at the bottom of the scale, only 336. 21

The Bureau of Municipal Research has set the cost of living for saleswomen in New York City at $18.65; for cities of over 50,000 it is $16.99; and for the smaller cities it is $15.48. Yet, the reports of the State Labor Department show 22
that 55 per cent of the employees of 5 and 10-cent stores were in receipt of wages under $13.99 and much lower than the standard set for the District of Columbia.

The cost of living fixed by the official State Factory Investigating Commission beginning in 1914 and corrected for the year 1921 is somewhat lower, being $17.06 a week for New York 23
City; for cities of over 50,000 it is $15.55 and for smaller cities $13.69. Yet, in five typical industries the median wage for the City of New York in the peak year of 1919, as found by the State Labor Department is: Paper box, $11.00–$11.49; shirt and collar, $13.50–$13.99; confectionery, $9.50–$9.99; mercantile, $12.00–$12.49; cigars and 24
tobacco, $15.00–$15.49. For the rest of the State the wage scale is uniformly lower.

The industrial sickness rate among women is high in New York as compared with men. The reports of the State Department of Labor show there are 154 cases of sickness of two weeks or more a 1,000 women as compared with 101 25
among men. Each man lost .9 days a week as compared with 1.6 days for women in 1921. Malnutrition, tuberculosis and the diseases of poverty are emphasized in our crowded cities, the deficiency in housing contributing. See ap-

pellants' main brief, pages, 1024–1028, 1031, 1038, 1075, 1070. *Marcus Brown Holding Co.* v. *Feldman* (*New York Housing Acts*), 256 U. S. 170. In support of the foregoing statistics, see New York State Department of Labor, Special Bulletin No. 109, Sept. 1921, Employment of Women in 5 and 10 cent stores; Study of Industrial Illness, New York State Department of Labor 1921; Reports New York Factory Investigating Commission, Preliminary, 1913, 1914, 1915; Bulletin, Consumers League, "Less Than a Living Wage," Dec. 1921. U. S. Census, Manufacturers 1919.

The wealth and prosperity of our State should afford no excuse for the continuation of parasitic industries thriving upon ignorant or pauper labor supported in part by subsidies from the State and charitably inclined.

Pending Legislation.

The Governor of New York addressed the Legislature in a message dealing with the minimum wage as applicable to this State. This we print at the end of this argument as "Addendum 1." He briefly reiterated his recommendations in his annual message this year. There have been introduced in the Legislature, Assembly Bill Int. No. 18 and Senate Bill Int. No. 523, identical bills, representing the Governor's proposals. The Assembly bill is printed at the end of this argument as "Addendum 2."

This bill, like the statute under review in the cases at bar, provides for a State Commission to fix a living wage for women and minors in industries after conference with the industries

affected, and forbids employment or the acceptance of employment at a less rate under criminal penalties. There are also pending other bills of somewhat different provisions, Assembly Bills Int. Nos. 421, 422.

Statutes of New York limiting "freedom of contract" of women in industry.

The Labor Law of the State of New York (Chapter 50, Laws 1921, Constituting Chapter 31 of the Consolidated Laws as amended), abounds with instances where contracts for the labor of women and minors are restricted. The following are typical:

§ 146. Women and children may not engage in the operation of dangerous machinery and processes enumerated in detail, of which the operation of circular or band saws and power printing presses are suggestive.

§ 148. Women may not be employed until four weeks after childbirth.

§ 172. Women may not be employed more than fifty-four hours a week or nine hours a day, or six days a week. No woman may be employed between ten at night and six o'clock in the morning.

We submit, the argument of the appellants demonstrates that the health, welfare and safety of women and minors are protected in no different degree by these statutes, limiting the "liberty of contract" than by a minimum wage law.

In conclusion, we call attention to the action of the Court of Appeals of New York in dealing with a similar question of social legislation aris-

ing in the case of *People* v. *Charles Schweinler Press* (1915,) 214 N. Y. 395.) This case is cited generally by the appellants at page XXXIX of their main brief, but is not discussed in the application we desire to give it. The statute there under review, forbade women from working in factories between ten at night and six in the morning. A law similar in result had been declared unconstitutional by the Court of Appeals in *People* v. *Williams,* 189 N. Y. 131, only eight years before. Yet, the Court in refusing to regard the earlier case as stare decicis gave among its reasons, the information since gained in New York and other states and countries as to the adverse effect of night work upon the health and welfare of women, Chief Judge Hiscock said at pages 411–412:

> "Especially and necessarily was there lacking evidence of the extent to which during the intervening years the opinion and belief have spread and strengthened that such night work is injurious to women; of the laws, as indicating such belief, since adopted by several of our own states and by large European countries, and the report made to the legislature by its own agency, the factory investigating commission, based on investigation of actual conditions and study of scientific and medical opinion that night work by women in factories is generally injurious and ought to be prohibited. * * * * * * * * * *
>
> So, as it seems to me, in view of the incomplete manner in which the important ques-

tion underlying this statute — the danger to women of night work in factories — was presented to us in the *Williams* case, we ought not to regard its decision as any bar to a consideration of the present statute in the light of all the facts and arguments now presented to us and many of which are in addition to those formerly presented, not only as a matter of mere presentation, but because they have been developed by study and investigation during the years which have intervened since the *Williams* decision was made. There is no reason why we should be reluctant to give effect to new and additional knowledge upon such a subject as this even if it did lead us to take a different view of such a vastly important question as that of public health or disease than formerly prevailed. Particularly do I feel that we should give serious consideration and great weight to the fact that the present legislation is based upon and sustained by an investigation by the legislature deliberately and carefully made through an agency of its own creation, the present factory investigating commission. * * *"

The same Factory Investigating Committee created in 1912 investigated the question of minimum wages for women and minors and made a recommendation concerning the subject during the year 1915 (Fourth Report of Factory Investigating Commission for 1915 Vol. I, pages 47-48.)

46 *Printed Argument for State of New York.*

The *Charles Schweinler Press* case was brought here upon writ of error and argued, but the appeal was dismissed because there was no final judgment in the state courts, 241 U. S. 618.

THE JUDGMENT APPEALED FROM
47 SHOULD BE REVERSED.

Albany, N. Y., Feb. 15, 1923.

CARL SHERMAN,
Attorney-General of New York.

EDWARD G. GRIFFIN,
Deputy Attorney-General.

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ADDENDUM 1.

Governor's Messages.

STATE OF NEW YORK,

EXECUTIVE CHAMBER,

ALBANY. 52

January 3, 1923.

* * * * * * * *

MINIMUM WAGE

For many years we have discussed putting into effect a minimum wage for women and minors in industry established by means of determinations to be reached by a board composed of representatives of the interests involved, the public, the workers and the employers. For years this subject has been agitated and discussed in this State. Experience has shown that we cannot rely upon voluntary recognition of a just minimum wage. There are still many industries in the State where wages for women are far below a decency standard, let alone one that means comfort. All of the arguments made against minimum wage legislation are deceptive.

The State owes it to her women and children to help industry realize that they must be paid a wage that will keep them in health and comfort if we are to conserve one of our greatest resources. I have confidence in the wisdom and sound judgment of our business men and I am satisfied that they will make no objection to an agency of the State that will provide them with

information which will permit them when they become convinced, to remove the industrial injustice that grows out of wages so low that the health of the worker must in time be impaired.

I sincerely believe that the majority of the members of the Legislature are in accord now with my views on this subject and I hope that there will be no delay in putting into effect a law embodying in the Department of Labor an unpaid Minimum Wage Board for the establishment of a minimum wage for women and minors in industry.

* * * * * * * *

April 8, 1919.

* * * * * * * *

When we speak of a legal or minimum wage, we do not mean that wages should be fixed or regulated by law, or that the principle of competition in fixing of wages should be abandoned; or, as it has been otherwise expressed, a living wage does not interfere with collective or even individual bargaining but it establishes the rule that no contract shall be made which to the women workers means the giving away of everything that makes life worth living and results in injury to the whole of society.

A minimum or living wage means the minimum standard below which wages should not be allowed to fall in the low-paid industries, and it has generally been defined as the amount necessary to maintain the woman worker in health and decent comfort. Nor does the minimum wage have the effect of compelling the employer to employ the woman at a certain wage, or of compelling a

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woman to work for that wage. In the essence, the legal or minimum wage is prohibitory, not compulsory in character. The State, in effect, says that to employ women at a wage that is insufficient to sustain them is a public menace, and therefore that danger is prohibited, just as is prohibited the erection of a factory building without proper fire escape exits or sanitary arrangements.

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There is a popular impression that in fixing the minimum wage, the Legislature passes a law saying that no woman shall be employed at less than a certain sum per day or per week. That is not the kind of minimum wage law contemplated by the pending bill or was it ever recommended by any agency in this State. The minimum wage we have under consideration is the determination by a commission with the assistance of wage boards made up of representatives of employers, employees and the public, of the wage necessary to maintain women and minor workers in health and decent comfort in any given industry in any given locality.

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Remove from your mind any idea you may have that this legislation is sought as a matter of favor to any class of people in our State and look at it from the broad viewpoint, that its enactment is sought in the interest of the State itself. Wages that are so low as not to enable women to sustain themselves involve danger not only to the women themselves but to the State, danger to health, danger to moral standards, danger to society and the race.

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When less than a living wage is received, how is the difference made up, for made up it must

be in some form. The woman worker pays in reduced health. The employer pays in greatly reduced efficiency. The whole working class to which the woman belongs pays as the result of an unfair and below-the-belt competition. The State pays through its public and private charities, its
67 hospitals, reformatories and other eleemosynary institutions. Heredity pays in the form of poorly nurtured and delinquent offspring; and the Nation pays in the impairment and impoverishment of its capital resources.

I remember a witness before the State Factory Investigating Commission summed it all up in
68 these words: "To pay a girl what is below a living wage, is like running a thoroughbred horse without shoes. In order to economize a few dollars at one end of the line, we incur a cost that runs up to hundreds of dollars."

Send for the testimony adduced before the State Factory Investigating Commission, and be-
69 fore you dispose of this proposition, read for yourselves what low wages mean in the way of insufficient food, lack of proper nourishment, poor housing facilities and utter lack of recreation. See if you can read as I have from this testimony, that the underpaid workers live in large part upon their reserve of vitality, of physical stamina and moral courage. See if you cannot read from
70 it that thousands of our girls and women are annually drawing on the bank account of their vitality and will continue to do so until nature notifies them that the account is overdrawn, and they frequently die from tuberculosis or some other disease that they could have escaped had

they been adequately fed, adequately clothed and properly housed.

So much for the effect upon health. What effect has the receipt of less than a living wage on moral standards? Dr. Howard Kelly, the eminent gyneologist, in an address before the International Congress on Hygiene and Demography held in Washington in 1912, said:

> "We draw nearer to the true source (of prostitution) when we discover that many girls are driven to a life of shame by low wages paid * * * in many of our sweat shops and in our stores and factories, where the faces of the poor are ground off by the rich * * *. We are reaping the harvest of the distressing social surroundings of the disinherited poor, robbed of their inalienable birthright to an opportunity to make an honest living, to live a good life happily in healthy homes, to enjoy a daily modicum of recreation, and to provide comfortably for the necessities of age."

That is strong language, even from so competent an observer as Dr. Kelly, and I would hesitate to go quite so far. Excessive low wages may not be the direct or primary cause of a life of shame, but indirectly it is inevitably one of the most important contributing factors. * * *

The inevitable tendency of less than a living wage is to place a heavy burden of dependency upon the State and its municipalities. This fact is strikingly borne out in a statement made to the Commission by the Commissioner of Charities of the City of New York, in which he says:

"We have, from year to year, steadily increasing numbers of dependent persons in my department, not suddenly this year more than last, but steadily increasing every year.

"Much of this dependence is unquestionably due to underpay, particularly of women and girls. The consequences of underpay are so obvious as hardly to need enumerating, such as underfeeding, comfortless, unwholesome dwelling accommodations, insufficient clothing. Pneumonia running into tuberculosis has been a wholesale incident of winter and spring among wage earners ever since Colonel Waring pointed it out years ago.

"The burden of all the consequences of underpay finally gets upon the city. We have the hospitals to maintain including the tuberculosis sanatoria and clinics, and the wards for the insane and the melancholy, besides all these patients in the general wards, the primary cause of whose presence in the hospitals is debility. No one disputes that poverty is a continuing predisposing cause of all this chronic and acute illness. What we need to do is to try to stop all that part of it which is due to underpay."

Of particular concern to the State are its women workers. Owing to their defenceless economic condition they are rarely able to hold off from making a bad bargain, nor is there any prospect that these workers will be able to strengthen their position.

But it is said the question of wages should be left as a commercial proposition to be regulated by the law of supply and demand. The answer is that we have been doing just that for over a hundred years and the report of the Factory Commission shows how utterly inadequate that is. The results have been highly injurious to social welfare and there are no natural forces to remedy the evil unless the State will, in self-respect, step in. Our whole social progress during the last fifty years has been obtained by limiting and regulating this so-called economic law of supply and demand.

The manufacturer conserves his machines because they belong to him and when they are worn out he must buy new ones, and he sets aside a part of his profits every year to cover their depreciation, so that when the old ones are worn out funds are at hand for new ones. The case of purchasing labor on the other hand, is like renting a machine without financial responsibility for the condition in which it is returned. The employer in sweated industries for example has little selfish motive in maintaining the future efficiency of his "human machines" since they do not belong to him, and when they have been exploited to the limit they can be thrown upon the scrap heap and be replaced by others. Society, however, must meet the "depreciation charges" in the form of charities and institutions for the care of defectives and criminals. The social expense of such exploitation is often a continuing one, since the victims are not only those who have been themselves exploited, but often also their children.

The minimum wage allows fair-minded employers to do justice to their employees, whereas, at the present time because of the unfair competition to which they are subjected, it is utterly impossible, however good their intention, to do that justice.

In passing this bill you are taking no novel step. Every modern industrial state, whether under a democratic or autocratic form of government, has found it necessary to establish standards of safety, sanitation and working hours, and in other ways to interfere with the contractual relations between employers and employees. These codes of labor laws have been enacted to protect the health and well-being of wage earners who make up a large part of the citizenship of the State. The wisdom of this policy is no longer seriously questioned, whether it be based on humanitarian sentiments or on the more scientific ground of conserving the human resources of the State.

There are three main factors affecting employment: (1) to provide a safe and sanitary place to work; (2) to prevent excessive employment; (3) to secure to the worker if she is in a class that is unable to do any collective bargaining, a wage sufficient to enable her to maintain herself in health and comfort. The State has provided for the first two. I now ask that the Legislature provide for the third.

Underpayment is just as much a cause of physical deterioration and disease, as overwork or unsanitary conditions of work. It is just as cruel to underpay a woman as to overwork her, and just as wasteful from the standpoint of the State.

To say that a woman shall not contract to work for less than a living wage, is to go no further than to say that she shall not contract to work more than nine or ten hours a day, or under certain unwholesome conditions which may affect her as a mother of future citizens. Indeed, it is much easier to trace a social connection between working for a wage inadequate to maintain a decent standard of living and working more than nine or ten hours a day. There is not an argument advanced today against the minimum wage that was not advanced a hundred years ago against the first labor laws. In the debates on the first child labor law, the first law limiting the hours of labor of women and the first laws providing for proper safety and sanitary conditions, you will find just the same social, political and economic objections that are today being urged against a living wage for women and minors.

We began by limiting child labor, at the outset limiting it first to twelve hours, and then to eleven, and then to ten, and nine hours; and then when we found that enough was not accomplished in regulating child labor, we had to pass a law to limit the hours of labor for women. There again, a generation, considerably more than a generation, was required to reduce the hours of labor for women; and at the same time we found we had to provide, in addition to the reduction of the hours of labor, specific times in which women might obtain rest; and then we had to enact all the provisions in regard to sanitation and safety in factories. We found that even this was not sufficient, and, in the interest of the community,

we had to protect the wage-earners in a great many other ways. We have had to protect them in the different states of the Union, in many different ways, which have been held constitutional by the Supreme Court of the United States, such as the fortnightly payments provided in
97 your own law, and upheld in *Williams* v. *Erie R. R.;* the anti-truck laws by which employers who give store orders must stand ready to cash those orders at par; the coal-screen laws, under which coal must be weighed and measured before screening, in order to fix the compensation; the employers' liability laws, and recently by work-
98 men's compensation laws.

It has already been proved that the proper administration of a minimum wage law is entirely practical and has a tendency not merely to raise the standard of wages in the industry, but to place the industry itself upon a more wholesome and less precarious basis. The enactment of a
99 minimum wage law would be no new and untried step.

In 1894 the first minimum wage legislation was enacted in New Zealand. Similar legislation was enacted by New South Wales in 1901, by Western Australia in 1902 and by the Australian Commonwealth in 1904. These laws were designed primarily for the settlement of industrial dis-
100 putes, but the Court created by the law was also given power to fix minimum rates of wages and with that feature alone we are concerned. In 1896 the first act providing for special boards to fix minimum wages in any trade was enacted in Victoria. This act of legislation was later fol-

lowed by South Australia in 1900, by Queensland in 1908, and by Tasmania in 1910. In England minimum wage boards were established in four industries in 1910, and extended in 1913 to four other larger and more important ones, the whole coal mining industry of England and Wales having also been brought under this legislation. The success of the boards in Australia is shown by their continuous increase from five boards in 1896 to 143 boards in 1913.

In this country State Commissions have determined minimum wage rates in Oregon, Massachusetts and Minnesota, and are preparing to do so in California, Colorado, Nebraska and Wisconsin. Commissions of inquiry on the subject have reported in Ohio, Indiana, Louisiana and Connecticut. The movement for such legislation is, therefore, beyond the State of mere agitation or discussion. Its usefulness and practicability is proven in various parts of the world.

I shall not take up your time to go into the various economic objections that have been urged against the adoption of a minimum wage and the answers thereto. They are discussed fully in the fourth report of the Factory Commission, copies of which you will find in your own library. * * *

(Signed) ALFRED E. SMITH.

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ADDENDUM 2.

Pending Bill.

STATE OF NEW YORK.

No. 18. Int. 18.

107

IN ASSEMBLY,

January 8, 1923.

Introduced by Mr. HAMILL — read once and referred to the Committee on Labor and In-
108 dustries.

AN ACT

To amend the labor law, so as to protect the health and welfare of women and minor workers by establishing a minimum wage board and providing for the determination of living wages for women
109 **and minors.**

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter fifty of the laws of nineteen hundred and twenty-one, entitled "An act in relation to labor, constituting chapter thirty-
110 one of the consolidated laws," is hereby amended by adding thereto after article three a new article, to be article three-a thereof, and to read as follows:

Pending Bill. 111

ARTICLE 3-A.

MINIMUM WAGE BOARD.

Section 114. Definitions.
115. Minimum wage board.
116. Secretary and other employees.
117. Salaries and expenses.
118. Sessions of board. 112
119. Powers of individual member.
120. Rules.
121. Technical rules of evidence or procedure not required.
122. Issuance of subpoenas; penalty for failure to obey.
123. Depositions. 113
124. Labor department to furnish statistics.
125. Register of women and minors.
126. Examination of books and records.
127. Investigation of wages paid to women and minors.
128. Creation of wage conference. 114
129. Determination of wage conference.
130. Action of board.
131. Special licenses.
132. Reconsideration of wage determinations.
133. Court review.
134. Penalties. 115
135. Civil action by employee.
136. Improper discharge of employees.
137. Construction of act.

§ 114. Definitions. Where used in this article,

a. " Board " means the minimum wage board created by section one hundred and fifteen;

b. " Woman " means a female of eighteen years of age or over;

c. "Minor" means a person of either sex under the age of eighteen years;

d. "Occupation" includes a business, industry, trade or branch thereof, but shall not include domestic service;

e. "Living wage," "living wages," "minimum wage" or "minimum wages" mean wages sufficient to supply the necessary cost of living, and to maintain the worker in health.

§ 115. Minimum wage board. There shall be in the department a minimum wage board, consisting of three members to be appointed by the governor, by and with the advice and consent of the senate, at least one of whom shall be a woman and one of whom shall be designated by the governor as chairman. The members shall be so chosen that one will be known to represent employers, one to represent employees and one the public. The state industrial commissioner shall also be an ex-officio member of the board but shall not have a vote on orders, decisions or determinations. The term of office of members of the board shall be for four years, except that the first members thereof shall be appointed for such terms that the term of one member shall expire on January first, nineteen hundred and twenty-four, one on January first, nineteen hundred and twenty-six, and one on January first, nineteen hundred and twenty-eight. Successors shall be appointed in like manner for a full term of four

years. Vacancies shall be filled in like manner by 121
appointment for the unexpired term. The board shall have an official seal which shall be judicially noticed. It shall make an annual report to the Legislature of its investigations and proceedings on or about the first day of February. A majority of the members shall constitute a quorum to transact business and the act or decision of 122
such a majority shall be deemed the act or decision of the board; and no vacancy shall impair the right of the remaining members to exercise all the powers of the board.

§ 116. Secretary and other employees. The board shall appoint and may at pleasure remove a secretary who shall be a woman and who shall 123
not be a member of the board. The board may also appoint and remove such other employees as are needed to carry out the provisions of this act. The authority and duties of all subordinates and employees and their compensation within the limits of the amounts appropriated therefor, shall be fixed by the board. 124

§ 117. Salaries and expenses. The members of the board shall be paid ten dollars for each day's service. The members of the board and their subordinates shall be entitled to their actual and necessary expenses when traveling on the business of the board. All other expenses of the board shall be paid out of the state treasury upon 125
vouchers signed by the chairman.

§ 118. Sessions of board. The board shall hold stated meetings at least once a month during the year and shall hold other meetings at such times and places as the needs of the public service may require, which meetings shall be called by the

chairman or by any two members of the board. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon every question and records of its examinations and other official actions which shall be open to the public.

§ 119. Powers of individual member. Any investigation, inquiry or hearing which the board is authorized to hold or undertake may be held or taken by or before any member of the board or the secretary, and the decision, determination or order of a member of the board when approved and confirmed by the board and ordered filed in its office, shall be deemed to be the decision, determination or order of the board. Each member and the secretary shall, for the purposes of this act, have power to administer oaths, certify to official acts, take affidavits and depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records and documents appertaining to or having bearing upon the question of wages, the hours of labor or the conditions of labor of any women or minor workers before the board or before any wage conference created pursuant to this act.

§ 120. Rules. The board shall adopt rules regulating and providing for the method of making investigations and inquiries; the organization and procedure of wage conferences created pursuant to this act; and otherwise for carrying into effect the provisions of this act.

§ 121. Technical rules of evidence or procedure not required. The board or a member or secre-

tary thereof or a wage conference in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure. 131

§ 122. Issuance of subpoenas; penalty for failure to obey. The board may require by subpoena the attendance and testimony of witnesses, the production of all books, payrolls, records, registers and other evidence relative to any matter under investigation, pursuant to this act, at any hearing, inquiry or investigation, before the board or a member or the secretary thereof, or at any session of any wage conference held as hereinafter provided. A subpoena shall be signed and issued by a member or by the secretary of the board and may be served in the same manner as a subpoena issued out of a court of record. In case of disobedience to a subpoena the board may invoke the aid of a justice of the supreme court in the appropriate district in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena or to testify thereunder the court may issue an order requiring appearance before the board, the production of documentary evidence, and the giving of evidence touching the matter in question, and any failure to obey such an order of the court may be punished by such court as a contempt thereof. 132 133 134 135

§ 123. Depositions. The board may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed

by law for like depositions in civil actions in the supreme court.

§ 124. Labor department to furnish statistics. Upon request of the board the State Industrial Commissioner shall cause the bureau of statistics and information and other bureaus or agencies of the department of labor to gather such statistics and information and to make such inspections and investigations as the board may require.

§ 125. Register of women and minors. Every employer of women and minors engaged in an occupation coming under this act shall keep a register of the names and addresses of and the wages paid to all women and minors employed by him, the occupation of each and the number of hours that they are employed by the day or by the week, and their actual working hours for such periods, and every such employer shall on request permit the board or any of its members or its secretary or agents to inspect such register. Every such employer shall also furnish in writing to the board any information concerning the foregoing matters that the board may require.

§ 126. Examination of books and records. The board shall have power through any member or authorized representative or through any employee of the department assigned for that purpose by the industrial commissioner, (a) to enter the place of business of any employer of women or minors in an occupation coming under this act for the purpose of inspecting and examining any and all books, payrolls and other records that in any way appertain to or have a bearing

upon the question of wages or hours of labor of any such women or minor workers and for the purpose of ascertaining whether its orders have been and are being complied with and (b) to require from any such employer full and correct statements in writing, when the board so deems necessary of the wages paid to, and the hours of labor of all women and minors in his employ.

§ 127. Investigation of wages paid to women and minors. It shall be the duty of the board and it shall have power to investigate wages and working conditions in any occupation in the state in order to determine whether wages are paid to women and minors employed therein which are inadequate to supply them with the necessary cost of living, and to maintain them in good health.

§ 128. Creation of wage conference. If after such investigation the board has reason to believe that a substantial number of women and minors employed in the occupation investigated receive wages inadequate to supply them with the necessary cost of living, and to maintain them in health, the board shall appoint a wage conference consisting of an equal number of representatives of employers and employees in the occupation in question and of one or more disinterested persons to represent the public. The board shall designate the chairman from among the representatives of the public and shall exercise exclusive jurisdiction over all questions arising with reference to the validity of the procedure and of the determination of the wage conference. The members of wage confer-

ences shall be allowed the necessary traveling and clerical expenses incurred in the performance of their duties, which shall be paid as are the expenses of the board. One or more members of the board shall serve on every wage board without the right to vote in its determinations.

§ 129. Determination of wage conference. Each wage conference shall have access to all the statistics and information gathered by the board with reference to the cost of living throughout the state and to wages and conditions in any occupation under investigation and any other data pertinent thereto. Each wage conference shall, after a careful investigation and after such public hearings as it finds necessary, determine the amount of the minimum wage, whether by time rate or piece rate, adequate to supply the necessary cost of living and to maintain in health a female employee in such occupation or any or all of the branches thereof, and shall also when it appears proper and necessary determine suitable minimum wages for learners and apprentices and for minors, and the maximum length of time any woman or minor may be kept at such work as a learner or apprentice. It shall also determine the maximum amount that may be deducted from the minimum wage for board or lodging furnished by the employer. It may make different determinations for the same occupation in different localities when it finds that difference in the cost of living in different localities justifies such different determinations. If the majority of the members of the wage confer-

ence agree upon such wage determinations, they shall report them to the board together with a statement of the reasons therefor and the facts relating thereto.

§ 130. Action of board. If the board deems proper, it may, after it receives the report of the wage conference recommit the subject or any part thereof to the same or to a new wage conference. If the report of a wage conference is accepted by the board, a summary of its findings and determination shall be published in the bulletin of the labor department and in such other manner as the board may deem advisable. Copies of the full report of the wage conference, shall be kept on file at the office of the board and open to public inspection. The board shall hold one or more public hearings on the report of the wage conference, notice of which shall be published in such newspapers as the board may prescribe, at least once, not less than thirty days prior thereto. After the public hearing or hearings the board shall make and render such an order as may be proper or necessary to adopt such minimum rates and carry the same into effect. The board in its order may fix different minimum rates for the same occupation in different localities when it finds that difference in the cost of living in different localities justifies the same. All orders of the board shall take effect not less than thirty days nor more than sixty days from the date of entry thereof, and shall require all employers in the occupation affected thereby to observe and comply with said order. After said order becomes effective, it

shall be unlawful for any employer to violate or disregard any of the terms or provisions thereof or to employ any woman worker or minor in any occupation covered by said order for lower wages than are authorized or permitted therein. A summary of the findings of the board and its determinations and orders shall be published in the bulletin of the labor department and in such newspapers as the board may prescribe and in such other manner as the board may deem advisable. Every employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers or minors are employed. If the wage conference fails to submit a report within reasonable time fixed by the board, the subject may be referred to a new wage conference or the board itself may proceed to hold a public hearing and determine the amount of the minimum wage in the manner hereinbefore provided.

§ 131. Special licenses. In any occupation or branch thereof in which a minimum time rate of wages only has been fixed, the board may issue to a woman whose earning capacity has been impaired by age or otherwise, a special license authorizing her employment for a wage less than the legal minimum wage. The board may also issue to a learner or minor lawfully employed in any occupation or branch thereof a license authorizing his or her employment for a wage less than the legal minimum wage and shall fix the minimum proportion of learners and minors to the total working force permitted in any estab-

lishment, with due regard to the maintenance of the standards of health and welfare protected by this act.

§ 132. Reconsideration of wage determinations. Whenever a minimum wage rate has been established in any occupation, the board may, upon petition of either employers or employees, or upon its own motion, reconvene the wage conference or establish a new wage conference, and any recommendations made by such wage conference or action thereby shall be dealt with in the same manner as the recommendation or act of a wage conference as originally created.

§ 133. Court review. All questions of fact arising under the foregoing provisions of this act shall, except as otherwise herein provided, be determined by the board and there shall be no appeal from the decision of the board on any such question of fact; but there shall be a right of appeal from the board to the appellate division of the third department from any ruling or holding on a question of law included in or embodied in any decision or order of the board.

§ 134. Penalties. Any person who violates any of the foregoing provisions of this act or any of the orders of the board thereunder shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for each offense by a fine of not less than fifty dollars nor more than two hundred and fifty dollars, or by imprisonment for not less than ten days nor more than three months, or by both such fine and imprisonment.

§ 135. Civil action by employee. If any employer shall pay an employee less than the minimum wage to which said employee is entitled under or by virtue of an order of said board, said employee may recover in a civil action against the employer full amount of said minimum wage less any amount actually paid to said employee by said employer, together with such attorney's fees as may be allowed by the court; and any agreement by said employee to work for less than such minimum wage shall be no defense to such action. The board may when it deems necessary take assignments of wage claims arising pursuant to its orders and in its name for the benefit of the employees, present actions for the collection thereof.

§ 136. Improper discharge of employees. Any employer who discharges or in any other manner discriminates against any employee because such employee has testified or is about to testify, or has served or is about to serve upon a wage conference, or is or has been active in the formation thereof, or has given or is about to give information thereof, or has given or is about to give information concerning the condition of such employee's employment, or because the employer believes that the employee may testify or may serve upon a wage conference, or may give information concerning the conditions of the employee's employment in any investigation or proceeding relative to the enforcement of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not more than two

hundred and fifty dollars, or by imprisonment for not less than ten days nor more than three months, or by both such fine and imprisonment. 171

§ 137. Construction of act. This act shall be known as the minimum wage law of the State of New York. The purposes of the act are to protect the women and minor workers of the state from conditions detrimental to their health and welfare resulting from wages which are inadequate to maintain decent standards of living; and the act in each of its provisions and in its entirety shall be interpreted to effectuate these purposes. 172

§ 2. Section one hundred and thirty of such chapter is hereby renumbered to be section one hundred and forty. 173

§ 3. Section one hundred and thirty-one of such chapter is hereby amended to read as follows:

§ **[**131**]** *141.* Employment of children between the ages of fourteen and sixteen. No child between fourteen and sixteen years of age shall be employed in or in connection with or for any factory, establishment or business specified in subdivision one of section one hundred and **[**thirty**]** *forty*, unless an employment certificate as provided by section six hundred and thirty-one of the education law is kept on file in the office of the employer at the child's place of employment. 174 175

§ 4. This act shall take effect immediately.